

No. 12811

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United States  
Court of Appeals  
for the Ninth Circuit.

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UNITED STATES OF AMERICA,  
Appellant,  
vs.

PAUL W. SAMPSELL, Trustee in Bankruptcy of  
the Estate of Juvenile Products of Pasadena, a  
Corporation, Bankrupt,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court,  
Southern District of California  
Central Division.

FILED

MAY 17 1951

PAUL F. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

ERNEST A. TOLIN,  
United States Attorney.

E. H. MITCHELL, and  
EDWARD R. McHALE,  
Assistants U. S. Attorney.

EUGENE HARPOLE, and  
FRANK W. MAHONEY,  
Special Attorneys,  
Bureau of Internal Revenue,  
600 U. S. Post Office and Court House  
Bldg., Los Angeles 12, Calif.

For Appellee:

CRAIG, WELLER AND LAUGHARN,  
111 West 7th Street Bldg., Room 817,  
Los Angeles 14, Calif.





In the District Court of the United States for the  
Southern District of California, Central Division

In Bankruptcy—No. 45868-WM

In the Matter of

JUVENILE PRODUCTS OF PASADENA, a  
Corporation,

Debtor.

IN PROCEEDINGS FOR AN ARRANGEMENT  
UNDER CHAPTER XI OF ACTS OF CON-  
GRESS RELATING TO BANKRUPTCY

To the Honorable . . . . ., Judge  
of the District Court of the United States for the  
Southern District of California, Central Division:

The Petition of Juvenile Products of Pasadena,  
of the City of Pasadena, County of Los Angeles,  
State of California, engaged in the business of  
manufacturing wooden toys and juvenile equipment,  
respectfully represents as follows:

I.

Your petitioner is a corporation duly organized  
and existing under and by virtue of the laws of the  
State of California, and is not a municipal, rail-  
road, insurance or banking corporation or a build-  
ing and loan association. Your petitioner has had  
its place of business at 81-89 Masonic Court, Pasa-  
dena, California, and within the above judicial  
district for a longer period than six months pre-

ceding the filing of this petition than in any other judicial district. [2\*]

## II.

No bankruptcy proceeding, initiated by a petition by or against your petitioner is now pending.

## III.

Your petitioner, while engaged in the manufacture of wooden toys and juvenile equipment in Pasadena, California, and on December 30, 1947, suffered extensive damage by fire to its tenanted premises, destruction of manufactured inventory and supplies, and damage to manufacturing equipment which fire loss has resulted in operation delay and production loss and resulted in the inability of the Company to pay its debts when they matured, and seeks an arrangement for extension of time in which to pay its debts under the provisions of Chapter XI of the Acts of Congress relating to bankruptcy, and that it can, by the use of the fire loss payments in partial recoupment of its fire loss and by an extension of time granted for payment to the unsecured creditors of the Petitioner as hereinafter proposed, recover from its losses caused by said operation delay and its resultant production losses and proposes an arrangement with its unsecured creditors, as follows:

(a) That petitioner as Debtor will pay in cash in full all costs of administration as fixed and determined by order of the Court;

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

(b) That Debtor will undertake and assume to pay all valid claims entitled to priority;

(c) That Debtor will pay its valid unsecured creditors, after their claims have been finally fixed and determined, in full, as follows:

(1) That upon the 1st day of June, 1948, and upon receipt by it of its funds from its insurance losses amounting to approximately \$10,700.00, the Debtor will pay to each Unsecured Creditor an amount pro rata of 10% of the amounts received by it from its sales as the claim of said Unsecured Creditor bears to the total amount of the claims of all other said Unsecured Creditors and [3] will pay said pro rata of said 10% of said receipts from its sales regularly on or before the 1st day of each calendar month thereafter until the full amount of the claim of each Unsecured Creditor has been paid together with interest at the rate of 6% per annum from the effective date of this agreement until paid.

(2) That Debtor, during the life of this arrangement, agrees that it will not transfer or assign, hypothecate, encumber or otherwise put out of its control any asset nor will it assume liability other than in the general course of its business, except as may be approved by this Court, and will conduct its business for the general advantage of all persons concerned and will make available to any said Unsecured Creditor any information pertinent to its interest upon written request, including information respecting an accurate report of its receipts from its sales, confidential trade secrets excepted, and that said information shall not be communicated

to any person not in confidential relation with said Unsecured Creditor and whose attempted disclosure can not be controlled by said Unsecured Creditor.

(d) That this Court retain jurisdiction upon approval of said arrangement.

#### IV.

The schedules hereto annexed and marked Schedule "A" and "B" and verified by your Petitioner contain a full and true statement of all of its debts and, so far as it is possible to ascertain, the names and addresses of its creditors, and a full and true statement of its Assets, and such further statements concerning said debts and assets as are required by the provisions of the Acts of Congress relating to bankruptcy.

#### V.

There are no known executory contracts by your Petitioner.

#### VI.

The statement hereto annexed and marked "Statement of [4] Affairs" and verified by your Petitioner contains a full and true statement of its affairs as required by the provisions of said Act; and your Petitioner further states in that connection that it has attempted to continue its manufacturing business despite its operation loss and production delay that resulted from its fire loss, as hereinbefore mentioned, and that it has an inventory of materials in the process of manufacture amounting to in excess of \$4,500.00 which added to funds payable for inventory loss and destruction, amounts to its normal

inventory in the average amount of \$15,000.00; that it and the Metal Arts Company, the copartnership to the business of which it succeeded, had annual sales as follows:

1945 .....	Approx. \$290,000.00
1946 .....	Approx. 260,000.00
1947 .....	Approx. 250,000.00

and that Petitioner has orders on hand amounting to approximately \$16,000.00, incoming orders amounting to between \$500.00 to \$1,000.00 each day, which it could fill if allowed to continue its manufacturing and selling operations, and would thereby protect its earning capacity and the value of its assets as a going concern in anticipation of the confirmation by this Court of Petitioner's proposed arrangement for payment to its unsecured creditors, which arrangement is dependent upon operation of its business.

VII.

That it would be for the best interests of all parties concerned if Petitioner is allowed to continue to operate in the regular course of business, without interruption incident to the filing of its petition for arrangement, until further order of this Court.

Wherefore, your Petitioner prays that proceedings may be had upon said petition in accordance with the provisions of Chapter XI of the Acts of Congress relating to bankruptcy, and that this matter should be referred generally to a referee in bankruptcy; and [5] that an order be entered herein

continuing Petitioner in possession and authorizing it to continue to operate and manage its property, pending the confirmation or refection of its proposed arrangement and until further order of this Court.

JUVENILE PRODUCTS OF  
PASADENA, a Corporation,

By /s/ VANCE PRATHER,  
President.

/s/ WILLIAM E. PRATHER,  
Attorney for Petitioner.

State of California,  
County of Los Angeles—ss.

Vance Prather, being first duly sworn, deposes and says:

That he is the president of the Petitioner in the above-entitled proceedings and makes this verification in behalf of said Petitioner; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters he believes them to be true.

/s/ VANCE PRATHER.

Subscribed and sworn to before me this 6th day of April, 1948.

[Seal] /s/ MILDRED WITBRACHT,  
Notary Public in and for the County of Los Angeles, State of California. [6]

Certificate

I Hereby Certify that the following is a full, true and correct copy of certain Resolutions duly adopted by the Board of Directors of Juvenile Products of Pasadena, a California corporation, at a regular meeting of said Board held on the 5th day of April, 1948:

“Resolved: That it is in the best interests of this corporation that the corporation shall immediately institute proceedings under Chapter XI of the laws of the United States pertaining to Bankruptcy.

“Be It Further Resolved: That the President and/or Secretary of this Corporation be, and they hereby are authorized, empowered and directed to execute such documents and instruments as shall be necessary, proper or required, on behalf of the corporation, for the prosecution of proceedings under said Chapter XI of the laws of the United States pertaining to Bankruptcy.”

I do further certify that the foregoing resolution is still in full force and effect, and same has not been amended or repealed.

Witness my hand and the seal of this corporation this 6th day of April, 1948.

/s/ VANCE PRATHER,  
President. [7]

*United States of America*

Summary of Debts and Assets

(From the Statements of the Debtor in Schedules A and B)

Schedule A 1-a	Wages .....	\$ 8,736.91
Schedule A 1-b (1)	Taxes due United States.....	6,085.79
Schedule A 1-b (2)	Taxes due States .....	1,488.68
Schedule A 1-b (3)	Taxes due counties, districts and municipalities .....	83.38
Schedule A 1-c (1)	Debts due any person, including the United States, having priority by laws of the United States.....	
Schedule A 1-c (2)	Rent having priority .....	1,725.00
Schedule A 2	Secured claims .....	22,313.52
Schedule A 3	Unsecured claims .....	87,899.59
Schedule A 4	Notes and bills which ought to be paid by other parties thereto.....	
Schedule A 5	Accommodation paper .....	
	Schedule A, total.....	<u>\$128,332.87</u>
Schedule B 1	Real estate .....	<u>\$ 61,986.12</u>
Schedule B 2-a	Cash on hand .....	
Schedule B 2-b	Negotiable and non-negotiable instru- ments and securities .....	
Schedule B 2-c	Stocks in trade .....	4,500.00
Schedule B 2-d	Household goods .....	
Schedule B 2-e	Books, prints and pictures .....	
Schedule B 2-f	Horses, cows and other animals.....	
Schedule B 2-g	Automobiles and other vehicles.....	1,200.00
Schedule B 2-h	Farming stock and implements.....	
Schedule B 2-i	Shipping and shares in vessels.....	
Schedule B 2-j	Machinery, fixtures and tools.....	15,071.59
Schedule B 2-k	Patents, copyrights, trade-marks.....	26,770.79
Schedule B 2-l	Other personal property.....	
Schedule B 3-a	Debts due on open accounts.....	6,416.57
Schedule B 3-b	Policies of insurance.....	
Schedule B 3-c	Unliquidated claims .....	3,300.00
Schedule B 3-d	Deposits of money in banks and elsewhere .....	10,792.19
Schedule B 4	Property in reversion, remainder, expectancy or trust.....	200.00
Schedule B 5	Property claimed as exempt.....	
Schedule B 6	Books, deeds and papers.....	
	Schedule B, total.....	<u>\$130,237.26</u>

Juvenile Products of Pasadena,

/s/ VANCE PRATHER, President.



Statement of Affairs  
(Form No. 3)

(For Bankrupt or Debtor engaged in business)

(Instructions: Each question herein must be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet properly identified and made a part hereof, should be used and attached. If the Bankrupt or Debtor is a partnership or a corporation, the answers should be made on behalf of such partnership, or corporation, and the statement should be verified by a member of the partnership or a duly authorized officer of the corporation.)

To The Honorable.....Judge of  
the District Court of the United States for the  
Southern District of California, Central Division:

The Petition of (Name in Full) Juvenile Products of Pasadena, of (Residence Address) 81-89 Masonic Ct., City of Pasadena, in the County of Los Angeles, Southern District of the State of California, and by occupation Manufacturer of wooden toys and Juvenile equipment.

Respectfully Represents:

1. That the Petitioner is now (or was until the .....day of ....., 19....) engaged in the business of: Manufacture of wooden toys and juvenile equipment under the name of Juvenile Products of Pasadena, at the address 81-89 Masonic Ct., Pasadena, Calif.

That the Petitioner commenced such business on or about the date as of June 30, 1947.

That during the six years immediately preceding the filing of the original Petition herein, the Petitioner was engaged in the business, at the addresses and with the partners, joint adventurers or other associates, as follows:

From (date):                      To (date): June 30, 1947, to present.

Nature of Business: Same as above.

Address of Business: Same as above.

Names of Partners or Associates: A corporation.

2. That during the two years immediately preceding the filing of the original Petition herein, the books of account and records of the Petitioner have been kept by or under the supervision of:

From (date):                      To (date): June 30, 1947, to date.

Name of Bookkeeper: Virginia McDonald, Secretary-Treasurer and office manager.

Address of Bookkeeper: 260 Burton Court, Pasadena, Calif.

That during the two years immediately preceding the filing of the original Petition herein, the books of account and records of the Petitioner have been audited by:

Date of Audit: Since date of June 30, 1947, two audits as of June 30 and December 31, 1947.

Name of Auditor: Stacy & Fifer.

Address of Auditor: 7225 Beverly Blvd., Los Angeles, Calif. [29]

That the books of account and records of the Petitioner are now in the possession of petitioner at the address 81-89 Masonic Court, Pasadena, Calif.

3. That the dates, and the names and addresses of the persons to whom the Petitioner has issued financial statements (including those to mercantile and trade agencies), upon his business and property within the two years immediately preceding the filing of the original Petition herein, are as follows:

Date: None.

Name of Concern:

Nature of Business:

Address:

4. That the last inventory of the Petitioner's property was taken on the 30th day of June, 1947, by (or under the supervision of) Charles Milham, address, offices of petitioner; and the said inventory was taken at (cost, market value, or otherwise) cost; and the amount of said inventory was \$28,356.20.

That the next prior inventory to the last inventory taken of Petitioner's property was taken on the.....day of....., 19.... by (or under the supervision of) ....., address ..... and the said inventory was taken at (cost, market value, or otherwise).....; and the amount of said inventory was \$.....

That the records of the investor above referred to are in the possession of petitioner, address 81-89 Masonic Ct., Pasadena, Calif. Petitioner not operating prior to June 30, 1947.

5. That the dates, sources, particulars and

amounts of income received by the Petitioner during each of the two years immediately preceding the filing of the original Petition herein, other than from the operation of Petitioner's business, are as follows:

Date: None.

Source from which Received:

Amount Received:

Particulars:

6. That the last filing of a U. S. Federal Income Tax Return by the Petitioner was for the year.....and was filed by the Petitioner at the office of U. S. Collector of Internal Revenue at: (None filed on fiscal year basis).

That the last filing of a State Income Tax Return by the Petitioner was for the year.....and was filed by the Petitioner at the office of.....  
.....of the State of....., at:  
(None filed on fiscal year basis).

7. That within the two years immediately preceding the filing of the original Petition herein, the Petitioner maintained bank accounts, alone or together with any other person, and in Petitioner's own name or any other name, as follows:

Name and Address of Bank:

Bank of America NT&SA, 160 E. Colorado,  
Pasadena.

Account in Name of:

Juvenile Products of Pasadena.

Names of Persons authorized to make withdrawals:

Virginia McDonald and/or Vance Prather.

Name and Address of Bank:

Union National Bank, Arroyo Pkwy & Colorado, Pasadena, Calif.

Account in Name of:

Juvenile Products of Pasadena.

Names of Persons authorized to make withdrawals:

Virginia McDonald and/or Vance Prather. [30]

That within the two years immediately preceding the filing of the original Petition herein, the Petitioner maintained safe deposit boxes or other depositories for Petitioner's securities, cash, or other valuables, as follows:

(Note: Give the name and address of each bank, or other depository, the name in which each box or other depository was kept, the name of every person who had the right of access thereto, a brief description of the contents thereof, and if surrendered, when surrendered, or if transferred, when transferred and the name and address of the transferee.)

None.

8. That the only property or properties held in trust by Petitioner for any other person are as follows:

(Note: Give name and address of such person or persons and a description of the property and the amount or value thereof.)

None.

9. That within the six years immediately preceding the filing of the original Petition herein, pro-

ceedings under the Bankruptcy Act have been brought by or against the Petitioner as follows:

(Note: Give the location of the Bankruptcy Court, the nature of the proceeding, and whether a discharge was granted or refused, or a composition arrangement or plan was or was not confirmed.)

None.

That at the time of the filing of the original Petition herein, certain property of the Petitioner was in the hands of a receiver or trustee, as follows:

(Note: If so, give the name and location of the Court, the nature of the proceedings, a brief description of the property, and the name of the receiver or trustee.)

None.

That within the two years immediately preceding the filing of the original Petition herein, the Petitioner made assignments of Petitioner's property for the benefit of creditors or general settlement with Petitioner's creditors, as follows:

(Note: If so, give dates, the name of the assignees, and a brief description of the terms of assignment or settlement.)

None.

10. That during the year immediately preceding the filing of the original Petition herein, the Petitioner made repayments of loans, as follows:

(Note: Give the name and address of the lender, the amount of the loan and when re-

ceived, the amount and date when repaid, and, if the lender is a relative, the relationship. If the Bankrupt or Debtor is a partnership, state whether the lender is or was a partner or a relative of a partner, and if so, the relationship.)

The petitioner received all of the assets subject to all liabilities of the Metal Arts Company, a co-partnership, by the issuance of its stock amounting to \$78,500.00; that as a part of the obligations of the manufacturing business, the assets of which it received thereby certain payments on loans previously made were made. Those obligations are listed in petitioner's schedules of assets and liabilities and are so identified.

11. During the year immediately preceding the filing of the original Petition herein, the Petitioner transferred or disposed of, other than in the ordinary course of business, the following assets or properties:

(Note: Give a description of the properties, the date of the transfer or disposition, to whom transferred or how disposed of and, if the transferee is a relative, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

None.

12. That during the year immediately preceding the filing of the original Petition herein, the Petitioner assigned accounts receivable as follows:

Date of Assignment:    Name of Assignee:    Address  
of Assignee:

That petitioner for the purpose financing its business operations entered into financing arrangements with two different individuals at different periods. A period was with A. D. Nast, Jr., d/b/a Nast & Co., 321 S. Beverly Drive, Beverly Hills, Calif., from February through November, 1947; during that period, accounts receivable were also financed with Ray S. Carson, 385 East Green St., Pasadena, Calif., and/or with the California Investors, a copartnership, of which petitioner is informed he was a copartner.

13. That during the year immediately preceding the filing of the original Petition herein, the Petitioner suffered losses from fire, theft or gambling as follows:

Date: December 30, 1947.

How Lost: Fire and water damage.

Amounts of Money or General Description of Property: Merchandise, finished and raw, machinery and equipment, leasehold improvements, and use and occupancy (the last undetermined). [32]

(If the Bankrupt or Debtor is a partnership or corporation the following additional questions should be answered.)

14. That during the year immediately preceding the filing of the original Petition herein, personal withdrawals, including loans, have been made by each member of the partnership, or by each officer,



director or managing executive of the corporation, as follows:

Date of Withdrawal: Dates disclosed by company's books.

Amount of Withdrawal: \$100.00 pr. wk.

Name and Office Held of Person Withdrawing: Virginia McDonald, Secretary, Treasurer and office manager.

Purpose of Withdrawal: Drawings against compensation.

Date of Withdrawal: Dates disclosed by company's books.

Amount of Withdrawal: \$200.00 pr. wk.

Name and Office Held of Person Withdrawing: Vance Prather, President and general manager.

Purpose of Withdrawal: Drawings against compensation.

Date of Withdrawal: Dates disclosed by company's books.

Amount of Withdrawal: \$50.00 pr. wk.

Name and Office Held of Person Withdrawing: Virginia Prather, vice-president and director of design.

Purpose of Withdrawal: Drawings against compensation.

15. (If the Bankrupt or Debtor is a Partnership) The names and addresses of the members of the partnership, comprising the Petitioner, are as follows:

Name of Partner: Corporate entity.

Address:

(If the Bankrupt or Debtor is a Corporation) The

names, titles or offices held, and addresses of the officers, directors and managing executive and of each stockholder holding twenty-five (25%) percent of the issued and outstanding stock of the corporation petitioner, are as follows:

Name: Vance Prather.

Office Held or Percent of Stock Held; President,  
90%.

Address: 2850 N. Marengo, Altadena, Calif.

Name: Virginia McDonald.

Office Held or Percent of Stock Held: Secretary,  
10%.

Address: 260 Burton Court, Pasadena, Calif.

JUVENILE PRODUCTS OF  
PASADENA,

By /s/ VANCE PRATHER,  
Bankrupt or Debtor,  
(Vance Prather,  
President).

/s/ WILLIAM E. PRATHER,  
Attorney for Petitioner. [33]

Oath to Statement of Affairs

State of California,  
County of Los Angeles—ss.

On this 5th day of April, A.D. 1948, before me personally came Vance Prather, President of the Juvenile Products of Pasadena, a Corporation, the officer duly authorized to make this verification and who subscribed to the foregoing Statement of Af-





trators, successors and assigns, jointly and severally, by these presents.

Signed and sealed this 7th day of June, A.D., 1948.

The Condition Of This Obligation Is Such, That, Whereas, the above named H. B. Kelley was, on the 4th day of June, A.D. 1948, appointed Disbursing Officer in the case pending in bankruptcy in the said Court, wherein Juvenile Products of Pasadena, a Corporation is the Debtor, and he, the said H. B. Kelley, has accepted said trust with all the duties and obligations pertaining thereto.

Now, Therefore, if the said H. B. Kelley, Disbursing Officer, as aforesaid, shall obey such orders as said Court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets, and effects of the estate of the said Debtor which shall come into his hands and possession and shall in all respects faithfully perform all his official duties as said Disbursing Officer, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of:

[Seal]            H. B. KELLEY.

/s/ WILLIAM E. PRATHER,

/s/ VIRGINIA McDONALD.

Examined and recommended for provided in Rule 8.

/s/ WILLIAM E. PRATHER.

Attorneys.

FIDELITY AND DEPOSIT  
COMPANY OF MARYLAND,

By /s/ WM. C. FUNDENBERG,  
Attorney-in-Fact.

Attest:

/s/ S. M. SMITH,  
Agent.

Approved this 10th day of June, A.D., 1948.

/s/ BENNO M. BRINK,  
Referee in Bankruptcy.

State of California,  
County of Los Angeles—ss.

On this 7th day of June, 1948, before me, Theresa Fitzgibbons, a Notary Public, in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Wm. C. Fundenberg, known to me to be the Attorney-in-Fact, and S. M. Smith, known to me to be the Agent of the Fidelity and Deposit Company of Maryland, the Corporation that executed the within instrument, and acknowledged to me that they subscribed the name of the Fidelity and Deposit Company of Maryland thereto and their own names as Attorney-in-Fact and Agent, respectively.

[Seal] /s/ THERESA FITZGIBBONS,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 3, 1950.

[Endorsed]: Filed, Referee, June 10, 1948.

[Endorsed]: Filed U.S.D.C., June 11, 1948. [36]

[Title of District Court and Cause.]

ORDER CONFIRMING ARRANGEMENT OF  
DEBTOR UNDER CHAPTER XI OF ACTS  
OF CONGRESS RELATING TO BANK-  
RUPTCY

The petition of Juvenile Products of Pasadena, a Corporation, Debtor, for confirmation of its arrangement under Chapter XI of Congress relating to Bankruptcy came on regularly to be heard before the Honorable Benno M. Brink, Referee in Bankruptcy, in the Courtroom, 323 Federal Building, Temple and Spring Streets, Los Angeles, California, on the 5th day of May, 1948, at the hour of 2:00 o'clock p.m. of said day, and was regularly thereafter continued to the 6th day of May, 1948, to the 14th day of May, 1948, and the 4th day of June, 1948, respectively, and that thereupon the arrangement of Debtor was submitted to the Court for its confirmation; and

It appearing to the Court that said Juvenile Products of Pasadena, a Corporation, Debtor, filed a petition for an arrangement under Chapter XI of Acts of Congress relating to Bankruptcy on April 6, 1948, the filing of which petition was approved by Court and a general reference was made to the Honorable Benno M. Brink, Referee in Bankruptcy, in this Court; that said Debtor, Juvenile Products of Pasadena, a Corporation, has filed its plan of arrangement and that [37] the same is contained in its petition for an arrangement under Chapter XI of Acts of Congress relating to Bankruptcy and that due and regular notice to creditors

and parties in interest as is provided by said Act has been made and given; and

It appearing to the Court that application for confirmation has been made; and

It appearing that said arrangement has been duly accepted in accordance with the provisions of said Chapter XI in that consents in writing have been filed by unsecured creditors of said Debtor and that the same constitute and are a majority in number of all creditors affected by said arrangement whose claims have been filed in these proceedings and which number represent a majority in amount of said claims generally; and that no written objections to said arrangement of Debtor have been filed herein; that said arrangement is for the best interests of the creditors of said Debtor and that it is fair, equitable and feasible; and that Debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt; and that the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by the Acts of Congress relating to Bankruptcy; and

It further appearing to the Court that a Creditors' Committee consisting of M. W. Engleman, as chairman, and Harry Frantz and H. W. Everts, all of Los Angeles, California, have been duly and regularly nominated for and appointed to act as said Creditors' Committee herein until further order of Court; and that it is for the best interests of the creditors that a person satisfactory to the



parties in interest be appointed as a Disbursing Officer of this Court to collect, receive, and to disburse monies and funds as in the arrangement of Debtor and as in this order hereinafter provided and that, upon qualifying, he be required to file a bond of a reputable surety company in the amount of \$2,500.00, to be approved by [38] this Court, and to act, in addition, as a representative of the creditors herein, also as in this order hereinafter provided, and that H. B. Kelley of South Pasadena, California, has been nominated for and has been appointed by this Court, until further order of this Court, as said Disbursing Officer and as said representative of the creditors and that he has duly qualified as said Disbursing Officer and is presently acting; and

It further appearing to the Court that under said arrangement of Debtor and under Chapter XI of the Bankruptcy Act that a deposit of \$1,627.49 to Edmund L. Smith, Clerk of this Court, for Referee's Expense Fund, Reporter's fees, and Referee's Salary Fund has been made by said Disbursing Officer and that said Disbursing Officer holds additional amounts of \$370.06 for Referee's Expense Fund and \$740.13 for Referee's Salary Fund and that William E. Prather, Esq., as attorney for Debtor has waived in open court the immediate payment of his attorney's fees, but has not waived the payment of said fees as to priority when hereafter fixed and determined by this Court; and

It further appearing to the Court that under the arrangement of Debtor and under Chapter XI of

the Bankruptcy Act that all valid claims entitled to priority be paid in full which have not been waived as to immediate payment and that all other valid claims entitled to priority be paid the amounts of immediate payment required as under the terms of the respective written waivers on file herein set out, and that said Disbursing Officer holds funds for and is ready to disburse all amounts of said valid prior claims which have not been waived and the amounts required for immediate payment as in said written waivers set out;

It Is Hereby Ordered:

1. That the Arrangement Under Chapter XI of Acts of Congress relating to Bankruptcy of the Juvenile Products of Pasadena, a Corporation, Debtor, on file herein, be and the same is hereby confirmed. [39]

2. That the Debtor be and it is hereby continued in possession of its properties and assets, and is hereby authorized and directed to manage, maintain, operate and keep in proper condition and repair the assets and property of the Debtor and to manage, operate, and conduct the business of Debtor and to this end to exercise its authority and franchises and discharge all duties obligatory upon it; to employ and discharge and fix the compensation of its employees, except those of its Secretary-Treasurer and Office Manager, Virginia McDonald, and its President, Vance Prather, whose salaries are hereby fixed at \$75.00 per week and

\$100.00 per week, respectively, until further order of this Court, and except the compensation of its Disbursing Officer and Creditors' Representative which is fixed as hereinafter provided; to collect and receive the income, rents, revenues, issues, and profits of all its assets, properties, and business and to collect all outstanding accounts; and to continue, until further order of this Court, the business of the Debtor making purchases of materials and supplies and sales of products in the regular course of business, all according to law and subject to the provisions of this order and to such supervision and control by this Court as the Court may exercise by further orders made when duly and regularly applied for herein; that Debtor, during the life of its arrangement will not transfer, or assign, hypothecate, encumber or otherwise put out of its control any asset nor will it assume liability other than in the general course of its business, except as may be approved by this Court, and will conduct its business for the general advantage of all persons concerned.

3. That a person satisfactory to the parties in interest herein be appointed as a Disbursing Officer of this Court to collect, receive, and to disburse monies and funds as in the arrangement of Debtor and as in this order hereinafter provided and that, upon qualifying, he be required to file a bond of a reputable surety company in the amount of \$2,500.00, to be approved by this Court, and to [40] act, in addition, as a representative of the creditors and the parties in interest herein, also as in this

order hereinafter provided and designated as Creditors' Representative, and that he will devote all time and attention necessary thereto and shall receive as his compensation in full for his services as said Disbursing Officer and as Creditors' Representative a sum in addition to any compensation provided for in said Chapter XI of the Bankruptcy Act until his compensation equal \$75.00 per week for each five-day week, or on that basis for any less time, that he may necessarily devote as said Disbursing Officer and said Creditors' Representative; and that H. B. Kelley of South Pasadena, California, be and is hereby appointed as said Disbursing Officer and as said Creditors' Representative, until further order of this Court.

4. That Debtor shall close its present books as of midnight of the date of this order of confirmation and the Debtor shall open new books of account immediately thereafter, and cause to be kept therein due and proper accounts of the earnings, expenses, receipts, and disbursements of the Debtor, and shall preserve proper vouchers for all payments made upon disbursement thereof, and deposit the monies coming into the possession of the Debtor in the bank in which the funds of the Debtor are presently deposited, or such other bank as may be selected by the board of directors of said Debtor, provided that such bank be an authorized depository of the funds under the jurisdiction of this Court and, provided further, that all vouchers in disbursement bear the signature of said Creditors'

Representative in addition to that of the Secretary-treasurer of said Debtor.

5. That said Creditors' Representative shall file with this Court on or before the 20th day of each calendar month a statement of assets and liabilities of the Debtor as of the last day of the preceding month, together with a summary statement of the revenues and expenses of the Debtor for such month and that a copy thereof be [41] mailed to the Creditors' Committee in care of its chairman; that he shall make available to any unsecured creditor herein any information pertinent to its interest upon written request, including an accurate report of Debtor's receipts from its sales, confidential trade secrets excepted, and that said information shall not be communicated to any person not in confidential relation with said unsecured creditor and whose attempted disclosure cannot be controlled by said unsecured creditor; and that, in the event of the inability of said Creditors' Representative to act, that said Debtor comply with the provisions of this paragraph.

6. That Debtor shall pay in cash in full, in addition to the deposit heretofore made to the Clerk of this Court of \$1627.49 and in addition to the amounts hereby ordered to be held by said Disbursing Officer of \$370.06 for Referee's Expense Fund and \$740.13 for Referee's Salary Fund, all costs and expenses of administration as fixed and determined by this Court.

7. That Debtor shall undertake to pay and pay,

in addition to the payment of all valid claims entitled to priority which have not been waived as to immediate payment and in addition to the amounts of immediate payment required as under the terms of the respective written waivers on file herein set out, all valid claims entitled to priority as in the terms of their respective written waivers set out or as may be modified in writing subsequently, and that with respect to the claim of the Bureau of Internal Revenue, United States Treasury Department, amounting to \$8,366.83 the immediate payment of which has been waived on the basis of a cash payment of \$1,366.83 upon the confirmation of the arrangement of Debtor and the balance in twelve equal monthly installments of approximately \$583.00 each, payable monthly and commencing thirty days after the entry of this order of confirmation plus statutory interest on the outstanding balances and is conditioned that the Debtor, during the life of its arrangement, assume the liability for, and agrees to pay in full to the [42] United States of America, any and all Federal taxes legally due from the Debtor, the Receivers, or Trustees thereof, whether or not proofs of claim therefor have been filed in this proceeding; that such taxes shall be paid by the Debtor, during the life of its arrangement, when, as, and if they may become due and the lien therefor, if any, and the priorities with respect thereto shall not be affected by the confirmation of Debtor's arrangement but shall remain unimpaired until the taxes shall have been fully paid or satisfied;

that the United States of America is hereby granted the same remedies against the Debtor, during the life of its arrangement, and against its assets, with regard to the collection of such taxes, as it had against the Debtor theretofore; that all statutes of limitation upon the collection of such claims shall be suspended during the time these proceedings are pending and for such additional period of time as such claims or any part thereof remain unpaid; that subject to its approval the Court shall retain jurisdiction over the assets herein dealt with and over any and all persons, firms, or corporations to which said assets may be transferred, and over all parties appearing herein for the purpose of carrying out and giving effect to any and all provisions of said arrangement and this order of confirmation insofar as said arrangement affects and applies to tax claims of the United States of America, or for the practical protection of the tax claims of the United States upon subsequent orders pertinent to, in amplification, extension, limitation, or in otherwise modification of this order of confirmation.

8. That Debtor shall pay its valid unsecured creditors, after their claims have been finally fixed and determined, in full, as follows:

That Debtor shall pay to said Disbursing Officer, duly appointed, qualified, and acting, and amount equal to 10% of the amounts received by it from its sales each month, commencing on the date of this order of confirmation and payable regularly on the 1st [43] day of each calendar month thereafter, until an amount equal to the amounts owing

to the valid unsecured creditors of Debtor has been paid in full, together with interest at the rate of 6% per annum from date of this order of confirmation until paid; that said Disbursing Officer shall thereupon pay to each valid unsecured creditors of Debtor an amount pro rata of said 10% as the amount of the claim of each valid unsecured creditor bears to the total amount of the valid unsecured claims of all other unsecured creditors of Debtor, regularly and monthly and on or before the 10th day of each calendar month thereafter, until the full amount of the claim of each unsecured creditor has been paid in full, together with interest at the rate of 6% per annum from the date of this confirmation order until paid; provided, that any said unsecured creditor may consent in writing to receive its said pro rata payment at longer intervals than one month.

9. That this Court reserves the full right and jurisdiction to make from time to time such orders as this Court may deem proper in executing the powers conferred by the provisions of Chapter XI of the Bankruptcy Act; and in general this Court reserves full right and jurisdiction to make from time to time such orders amplifying, extending, limiting, or otherwise modifying this order and all orders now or hereafter made herein as to this Court may at any time seem proper.

Done this 24th day of July, 1948.

/s/ BENNO M. BRINK,  
Referee in Bankruptcy.



United States of America,  
Southern District of California, Central Division—ss.

I do hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears of record in my office.

In witness whereof, I hereunto set my hand this 24th day of July, 1948.

/s/ BENNO M. BRINK,  
Referee in Bankruptcy.

[Endorsed]: Filed, Referee, July 24, 1948.

[Endorsed]: Filed, U.S.D.C., July 27, 1948. [44]

[Title of District Court and Cause.]

### ORDER OF ADJUDICATION

A hearing having been had herein under the provisions of Section 377(2) of Chapter XI of the Bankruptcy Act and Findings of Fact and Conclusions of Law having been made and filed herein, the Referee therefore makes the following order:

It Is Ordered that the within debtor be and it hereby is adjudged a bankrupt, and

It Is Further Ordered that bankruptcy be proceeded with pursuant to the provisions of the Bankruptcy Act.

Dated: December 13, 1948.

/s/ BENNO M. BRINK,  
Referee in Bankruptcy.

[Endorsed]: Filed, Referee, December 13, 1948.

[Endorsed]: Filed, U.S.D.C., December 16, [45]  
1948.

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON PETITION  
FOR REVIEW OF ORDER IN RE CLAIM  
OF COLLECTOR OF INTERNAL REVE-  
NUE FOR WITHHOLDING TAXES

To the Honorable William C. Mathes, Judge of the  
Above-Entitled Court:

I, Benno M. Brink, one of the Referees in Bankruptcy of said Court, before whom the above-entitled matter is pending under an order of general reference, do hereby certify to the following:

The United States of America has duly filed its petition for the review of an order made by your Referee in this matter on March 3, 1950, in which he held that a claim filed in this proceeding by the Collector of Internal Revenue for withholding taxes was not entitled to any priority or preference over other obligations incurred by the above-named [46] bankrupt while it was operating its business as a debtor in possession under the provisions of Chapter XI of the Act of Congress relating to Bankruptcy.

The Proceedings

This proceeding began by the filing herein on April 6, 1948, of a petition under Section 322 of Chapter XI of the Act of Congress relating to Bankruptcy. Thereafter, on July 24, 1948, an order was duly entered confirming the plan of arrangement proposed by the bankrupt (then debtor) in

the said Chapter XI proceeding. Under the said plan of arrangement the debtor remained in possession of its property and continued the operation of its business. The Court, however, retained full jurisdiction over the debtor and its property.

On December 13, 1948, an order was duly entered herein terminating the proceeding under Chapter XI and adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with.

The assets in the possession of the trustee in bankruptcy herein are insufficient to pay in full the obligations incurred by the bankrupt during its operations as a debtor in possession prior to the aforesaid order of adjudication.

In its said operations the bankrupt deducted withholding taxes from wages and salaries paid by it to its employees. In due course the Collector of Internal Revenue filed herein his claim for \$1,757.82, being the amount of the said taxes which were deducted, as aforesaid.

On December 16, 1949, upon the petition of the trustee in bankruptcy herein, an order to show cause was issued requiring the Collector of Internal Revenue to show cause why it should not be decreed that the aforesaid claim [47] for \$1,757.82 should be paid ratably with all other Chapter XI obligations arising in this proceeding. Other matters were included in the said order to show cause which are not involved in this review.

The said order to show cause was duly heard and on March 3, 1950, your Referee filed his Findings of Fact and Order in which he allowed the afore-

said claim as a claim to participate ratably with the other claims which arose under the aforesaid Chapter XI operations and in which he denied the said claim any priority whatsoever over any other claims which arose in or out of such operations. It is from the said order that this review is taken.

### The Questions Presented

The questions presented by this review are set forth in detail on pages 5 and 6 of the petition for review which is going up with this certificate but, in the opinion of your Referee, they may be summarized as follows:

(1) Does the evidence in this matter show that the bankrupt, from time to time, had funds with which to create a trust to provide for the payment of the taxes deducted by it from the wages and salaries of its employees?

(2) Is the claim here involved entitled to priority over other claims arising under the Chapter XI operations in this case?

(3) Are all the assets in the hands of the trustee in bankruptcy herein constructively impressed with a trust for the payment of the withholding taxes here involved?

### The Evidence

The evidence in this matter may be summarized as follows: [48]

The bankrupt carried on its Chapter XI opera-

tions at a heavy loss. During such operations it did not acquire any new property. On the contrary, the assets it had at the commencement of the said operations were substantially reduced thereby.

The bankrupt, in its operations as debtor in possession, deducted withholding taxes from the wages and salaries of its employees but it did not at any time create a special fund for any of the amounts so deducted. Furthermore, it did not at any time during the said operations have the funds necessary to create such a special fund. In other words, the bankrupt simply deducted the taxes here in question. It did not set apart the necessary funds to pay the same and it could not have done so at any time during the said operations.

No trust fund for the payment of withholding taxes was taken over by the trustee in bankruptcy in this case.

The assets in the hands of the trustee are insufficient to pay in full the obligations incurred by the bankrupt in its Chapter XI operations.

#### Referee's Findings of Fact and Order

The original of your Referee's Findings of Fact and Order in this matter is going up with this certificate.

#### Papers Submitted

The following papers are transmitted herewith:

1. Petition for Order to Show Cause, etc., filed December 16, 1949.
2. Order to Show Cause, etc., filed December 16, 1949.

3. Findings of Fact and Order on Order to Show Cause, filed March 3, 1950.

4. Motion and Order Extending Time to File a Petition for Review, filed March 13, 1950. [59]

5. Petition for Review, filed April 17, 1950.

Respectfully submitted this 19th day of May, 1950.

/s/ BENNO M. BRINK,  
Referee in Bankruptcy.

[Endorsed]: Filed, U.S.D.C., May 19, 1950. [50]

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[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE  
AND FOR AN ORDER TO RESTORE  
ORDER TO SHOW CAUSE TO CALENDAR

To the Honorable Benno M. Brink, Referee in  
Bankruptcy:

The verified petition of Paul W. Sampsell respectfully shows:

I.

That he is the duly appointed, qualified and acting trustee in bankruptcy herein.

II.

That the United States Government claims taxes due and owing for the year 1945 from Vance and Virginia Prather each in the sum of \$1967.05; that the United States Government filed a lien against certain real property standing in the name of the

above-entitled bankrupt estate on November 7, 1947, to secure the payment of the aforesaid sums claimed to be due and owing on the individual income taxes of the said Vance and Virginia Prather; that the aforementioned real property against which the lien is asserted did at one [51] time stand in the names of Vance and Virginia Prather as joint tenants, but that the property was thereafter transferred from the said Vance and Virginia Prather to this bankrupt corporation, the date being recorded on July 14, 1947.

### III.

That your trustee brought on an Order to Show Cause to determine the validity of the aforesaid liens asserted against the said real property, which Order to Show Cause was heard on the 8th day of June, 1949, and an Order was thereafter made on the said Order to Show Cause whereby the final settlement of the above-mentioned liens was deferred and further whereby it was directed that the claims of the Federal Government in and to the said real property under the asserted lien would attach to and be satisfied out of the proceeds of the sale of the real property upon the final determination of the validity of the liens of the Federal Government as aforesaid.

### IV.

That after the making of the said Order on the 8th day of June, 1949, your trustee went into escrow and completed the sale of the above-mentioned real



property to the City of Pasadena, and now holds the proceeds of that sale subject to whatever claims the Federal Government may have as arising out of the aforementioned liens.

## V.

That in addition to the aforementioned tax claims and liens of the United States Government the Collector of Internal Revenue asserts a claim in the sum of \$1757.82 which is alleged to be taxes due and owing as a result of this bankrupt corporation's operation under the provisions of Chapter XI; that the Collector asserts that the said taxes should be paid in full and should not be required to share ratably with other claims arising out of the Chapter XI proceedings; that your trustee asserts that there is no priority of any kind or nature for the said claims of the Federal Government arising out of the Chapter XI proceedings, and that [52] the same should share ratably with other Chapter XI claims asserted in this bankruptcy.

Wherefore, your trustee prays that an Order issue restoring the aforementioned Order to Show Cause to the calendar requiring the Collector of Internal Revenue to be and appear before the Referee on a day fixed and then and there show what lien rights, if any, the Collector has in and to the proceeds of the sale of real property of the above-captioned bankrupt estate, and your trustee further prays that the Collector of Internal Revenue be ordered to appear before the Referee on a day fixed and then and there show why the claim

of the Collector of Internal Revenue in the sum of \$1757.82 should not be paid ratably with all other Chapter XI obligations arising in this bankruptcy.

Dated: December 14, 1949.

/s/ PAUL W. SAMPSELL,  
Trustee.

CRAIG, WELLER &  
LAUGHARN,

By /s/ C. E. H. McDONNELL,  
Attorneys for Trustee.

Duly verified.

[Endorsed]: Filed, Referee, December 16, [53]  
1949.

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[Title of District Court and Cause.]

ORDER TO SHOW CAUSE AND ORDER TO  
RESTORE ORDER TO SHOW CAUSE TO  
CALENDAR

Upon reading and filing the verified petition of Paul W. Sampsell, trustee herein, and good cause appearing,

Now, therefore, upon motion of Craig, Weller & Laugharn by C. E. H. McDonnell, attorneys for trustee,

It Is Ordered that the Order to Show Cause to determine the validity of tax liens asserted against

certain real property be restored to the calendar requiring the Collector of Internal Revenue to be and appear before the undersigned Referee in Bankruptcy in his courtroom, 323 Federal Building, Temple & Spring Streets, Los Angeles, California, on the 4th day of January, 1950, at the hour of 2:00 o'clock p.m. thereof, and then and there show what lien rights, if any, the said Collector of Internal Revenue has in and to the proceeds of the sale of real property of the above-captioned bankrupt estate, and further that the Collector of Internal Revenue be ordered to show why the claim of the Collector of Internal Revenue in the sum of [55] \$1757.82 should not be paid ratably with all other Chapter XI obligations arising in this bankruptcy.

Dated: This 16th day of December, 1949.

/s/ BENNO M. BRINK,

Referee in Bankruptcy.

[Endorsed]: Filed, Referee, December 16, [56] 1949.

In the United States District Court, Southern  
District of California, Central Division  
No. 45,868-WM

In the Matter of

JUVENILE PRODUCTS OF PASADENA, a  
Corporation,

Bankrupt.

FINDINGS OF FACT AND ORDER ON ORDER  
TO SHOW CAUSE

This matter having come on for hearing on the verified petition of the trustee, Paul W. Sampsell, on January 4, 1950, before the undersigned Referee in Bankruptcy at the hour of 2:00 p.m. thereof, and the trustee having been represented and appeared by and through his counsel, Craig, Weller & Laugharn by Hubert F. Laugharn, and the Collector of Internal Revenue having appeared by and through his counsel Eugene Harpole, and evidence both oral and documentary having been educed and submitted to the Court,

Now, Therefore, the Court makes its Findings of Fact, Conclusions of Law and Orders as follows:

I.

The Court finds that it is true that income taxes and interest were due, owing and assessed against Vance Prather and Virginia Prather for the calendar year 1945 each in the sum of \$1,967.05; that thereafter said 1945 income taxes were reduced by a recomputation and the allowance of a loss carry-

back by the Commissioner of Internal Revenue to the sum of \$1,037.00, each, plus interest at 6% per annum, or 20c per day, from January 31, 1950, until paid; the Court finds that the Commissioner of Internal Revenue's Assessment List carrying said assessment of 1945 income taxes against Vance Prather and Virginia Prather, was received in the office of the Collector of Internal Revenue at Los Angeles, California, on the fourth day of December, 1946; thereafter notice and demand for the payment of said 1945 income taxes was issued to Vance Prather and Virginia Prather, the taxpayers but said taxes have not been paid. The Collector of Internal Revenue thereafter and on the seventh day of November, 1947, filed notices of liens securing payment of said taxes to the United States in the office of the County Recorder of Los Angeles County, State of California; the Court finds that liens in favor of the United States arose on December 4, 1946, which attached to all property and rights to property, whether real or personal then belonging to the taxpayers, Vance Prather and Virginia Prather, or thereafter acquired by them and said liens became valid as to all the world upon the filing of notice of them on November 7, 1947, in the office of the County Recorder of Los Angeles, State of California.

## II.

That the taxpayers, Vance Prather and Virginia Prather were the owners of the following described real property on December 4, 1946:

“Lots 4 to 13, both inclusive of Mrs. Mary R. D. Gifford’s Subdivision of Lot 4 in Block A of San Pasqual Tract, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in book 18, page 75 of Miscellaneous Records, in the office of the County Recorder of said County.”

The said taxpayers, by a grant deed, dated June 27, 1947, and recorded in the office of the County Recorder of Los Angeles County, California, on July 14, 1947, conveyed said real property to “Juvenile Products Company of Pasadena a corporation,” in exchange for that corporation’s promise to issue certain shares of its capital stock to the grantors. A permit for the issue of said stock was obtained from the California Corporation Commissioner but none of said stock was ever actually issued to the taxpayers nor were they paid any other consideration for the transfer of said real property to the bankrupt. Vance Prather was the president of said corporation and Virginia Prather its Vice-President at the time of the execution of said grant deed. Both Vance Prather and Virginia Prather knew at the time of the execution of said grant deed that their 1945 income taxes had been assessed, were unpaid and that the Collector of Internal Revenue had demanded payment of said taxes.

### III.

The Court finds that the sum of \$1,757.82, is due and owing as withholding tax arising out of this bankrupt corporation’s operation under the pro-

visions of Chapter XI and while within the jurisdiction of this Court; the Court further finds that when wages were paid by this bankrupt corporation during its operation under Chapter XI, the requirements that withholding taxes be withheld and placed in a trust fund were ignored, that is to say, the net amount—i.e. the gross amount of wages, less the amount of withholding tax—was at all times paid; the Court further finds that during the said operation under Chapter XI, this bankrupt corporation at no time had the funds to create or did it create a separate trust fund composed of that portion of the wages withheld for the payment of withholding taxes.

The debtor was adjudicated a bankrupt on December 10, 1948.

#### IV.

That the Court finds that certain tax claims on which liens are asserted have been filed by the Collector of Internal Revenue in this proceedings as follows:

Period	Tax	Total
4-1/4-45	Withholding .....	\$ 30.59
4-1/4-46	Withholding .....	802.00
2-1/4-47	Withholding .....	1,308.97
1946	Federal Unemployment.....	110.90
4-1/4-47	Federal Insurance Contribution..	708.60
		\$2,961.06

Further interest to accrue on \$2,456.81 at 6% per annum from January 31, 1950.

The Court further finds that the aforesaid liens

were on taxes assessed against Metals Arts Co., a co-partnership composed of Vance Prather and Virginia Prather, which co-partnership was a predecessor of the bankrupt corporation herein, which bankrupt corporation assumed the liabilities of the said co-partnership; The Referee further finds that the tax liens as filed were liens against Metals Arts Co., a co-partnership and were not filed or asserted against the bankrupt herein.

Now, Therefore,

It Is Ordered and directed that the Collector of Internal Revenue has no lien against the real property sold by Vance Prather and Virginia Prather to this bankrupt estate by virtue of the fact that this bankrupt estate became at the time of the purchase and recordation of the aforesaid Grant Deed a "purchaser" within the meaning of Section 26 U.S.C.A. 3672a, and that therefore, the said lien of the Federal Government for taxes due from Vance Prather and Virginia Prather for the year 1945, was not good until the recordation of the United States Government lien on November 7, 1947, and that further,

It Is Ordered that the Collector of Internal Revenue has no claim or right in this bankruptcy for the taxes levied against Vance Prather and Virginia Prather for the year 1945, and

It Is Further Ordered that the claim of the Collector of Internal Revenue in the amount of \$1,757.82 as a result of this bankrupt's operation under the provisions of Chapter XI, be and the same hereby is allowed as a claim to participate ratably



with other claims arising under Chapter XI operation of this debtor, and is hereby denied any priority whatsoever over any other claims arising in or out of the operation of this debtor under Chapter XI.

It Is Further Ordered that the claims for taxes in the amount of \$2,967.06 plus interest, as due from the predecessor partners, the Metals Arts Co., be and the same hereby are allowed as a tax claim within the provisions of Section 64(a)4 of the National Bankruptcy Act, and

It Is Further Ordered and directed that the said claims for taxes from the Metals Arts Co. do not constitute a lien either upon the real property of this bankrupt corporation which has been sold heretofore to the City of Pasadena or a lien upon the proceeds of such sale.

Dated: This 3rd day of March, 1950.

/s/ BENNO M. BRINK,  
Referee in Bankruptcy.

Approved as to form:

By /s/ EUGENE HARPOLE,  
Attorney for Collector of  
Internal Revenue.

CRAIG, WELLER &  
LAUGHARN,

By /s/ C. E. H. McDONNELL,  
Attorneys for Trustee.

[Endorsed]: Filed March 3, 1950.

[Title of District Court and Cause.]

MOTION AND ORDER EXTENDING TIME TO  
FILE A PETITION FOR REVIEW

Comes Now the United States of America by and through its attorneys Ernest A. Tolin, United States Attorney for the Southern District of California; E. H. Mitchell and Edward R. McHale, Assistant United States Attorneys for said District; Eugene Harpole and James D. Pettus, Special Attorneys for the Bureau of Internal Revenue, and moves the Referee that the time within which the United States or Robert A. Riddell its Acting Collector of Internal Revenue, may file a Petition for Review of the Referee's Order of March 3, 1950, directing that the claim filed by the Collector of Internal Revenue on behalf of the United States in the amount of \$1757.82 for withholding taxes due from the bankrupt covering the period of its operations under the provisions of Chapter XI of the Bankruptcy Act participate pro rata with other claims, arising under the Chapter XI operation of the debtor be extended from March 13, 1950, to and including April 17, 1950.

Dated: This 13th day of March, 1950.

ERNEST A. TOLIN,  
United States Attorney. [62]

E. H. MITCHELL, and  
EDWARD R. McHALE,  
Assistant United States  
Attorneys,

EUGENE HARPOLE, and  
JAMES D. PETTUS,

Special Attorneys, Bureau of  
Internal Revenue.

JAMES D. PETTUS,

By /s/ EUGENE HARPOLE,

Attorneys for United States  
of America.

It Is So Ordered This 13th day of March, 1950.

/s/ BENNO M. BRINK,

Referee in Bankruptcy.

[Endorsed]: Filed, Referee, March 13, 1950. [63]

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[Title of District Court and Cause.]

### PETITION FOR REVIEW

Comes Now the United States of America by and through its attorneys Ernest A. Tolin, United States Attorney, for the Southern District of California, E. H. Mitchell and Edward R. McHale, Assistant U. S. Attorneys for said District, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, and files this petition for review of the order of the Referee entered herein on March 3, 1950, directing that the claim filed on behalf of the United States by the Collector of Internal Revenue for withholding taxes due from the bankrupt in the amount of \$1757.82, covering the period of its operations under the provisions of Chapter XI of the Bankruptcy Act, participate pro-rata with

other claims arising under the Chapter XI operations of the debtor, which order reads as follows:

“This matter having come on for hearing on the verified petition of the trustee, Paul W. Sampsell, on January 4, 1950, before the undersigned Referee in Bankruptcy at the hour of 2:00 p.m. thereof, and the trustee having been represented and appeared by and through his counsel, Craig, Weller & Laugharn by Hubert F. Laugharn, and the Collector of Internal Revenue having appeared by and through his counsel Eugene Harpole [64] and evidence both oral and documentary having been adduced and submitted to the Court,

“Now, Therefore, the Court makes its Findings of Fact, Conclusions of Law and Orders as follows:

“I.

“The Court finds that it is true that income taxes and interest were due, owing and assessed against Vance Prather and Virginia Prather for the calendar year 1945 each in the sum of \$1,967.05; that thereafter said 1945 income taxes were reduced by a recomputation and the allowance of a loss carry-back by the Commissioner of Internal Revenue to the sum of \$1,037.00, each, plus interest at 6% per annum, or 20c per day, from January 31, 1950, until paid; the Court finds that the Commissioner of Internal Revenue's Assessment List carrying said assessment of 1945 income taxes against Vance Prather and Virginia Prather, was received in the office of the Collector of Internal Revenue at Los Angeles, California, on the fourth day of December,

1946; thereafter notice and demand for the payment of said 1945 income taxes was issued to Vance Prather and Virginia Prather, the taxpayers but said taxes have not been paid. The Collector of Internal Revenue thereafter and on the seventh day of November, 1947, filed notices of liens securing payment of said taxes to the United States in the office of the County Recorder of Los Angeles County, State of California; the Court finds that liens in favor of the United States arose on December 4, 1946, which attached to all property and rights to property, whether real or personal then belonging to the taxpayers, Vance Prather and Virginia Prather, or thereafter acquired by them and said liens became valid as to all the world upon the filing of notice of them on November 7, 1947, in the office of the County Recorder of Los Angeles, State of California.

“II.

“That the taxpayers, Vance Prather and Virginia Prather were the owners of the following described real property on December 4, 1946:

“Lots 4 to 13, both inclusive of Mrs. Mary R. D. [65] Gifford’s Subdivision of Lot 4 in Block A of San Pasqual Tract, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in book 18, page 75 of Miscellaneous Records, in the office of the County Recorder of said County.”

“The said taxpayers, by a grant deed, dated June 27, 1947, and recorded in the office of the County Recorder of Los Angeles County, on July 14, 1947, conveyed said real property to ‘Juvenile Products

Company of Pasadena a corporation,' in exchange for that corporation's promise to issue certain shares of its capital stock to the grantors. A permit for the issue of said stock was obtained from the California Corporation Commissioner but none of said stock was ever actually issued to the taxpayers nor were they paid any other consideration of the transfer of said real property to the bankrupt. Vance Prather was the president of said corporation and Virginia Prather its Vice-President at the time of the execution of said grant deed. Both Vance Prather and Virginia Prather knew at the time of the execution of said grant deed that their 1945 income taxes had been assessed, were unpaid and that the Collector of Internal Revenue had demanded payment of said taxes.

### “III.

“The Court finds that the sum of \$1,757.82, is due and owing as withholding tax arising out of this bankrupt corporation's operation under the provisions of Chapter XI and while within the jurisdiction of this Court; the Court further finds that when wages were paid by this bankrupt corporation during its operation under Chapter XI, the requirements that withholding taxes be withheld and placed in a trust fund were ignored, that is to say, the net amount—i.e. the gross amount of wages, less the amount of withholding tax—was at all times paid; the Court further finds that during the said operation under Chapter XI, this bankrupt corporation at no time had the funds to create or did it create

a separate [66] trust fund composed of that portion of the wages withheld for the payment of withholding taxes.

“The debtor was adjudicated a bankrupt on December 10, 1948. ~~Paul W. Sampsell, as trustee in bankruptcy, received assets from or belonging to the debtor which produced the sum of \$46,737.77 in cash (Trustee’s First Account).~~

“IV.

“That the Court finds that certain tax claims on which liens are asserted have been filed by the Collector of Internal Revenue in this proceedings as follows:

“Period	Tax	Total
4-1/4-45	Withholding . . . . .	\$ 30.59
4-1/4-46	Withholding . . . . .	802.00
2-1/4-47	Withholding . . . . .	1,308.97
1946	Federal Unemployment	110.90
4-1/4-47	Federal Insurance Contribution . . . . .	708.60

Further interest to accrue on \$2,456.81 at 6% per annum from January 31, 1950.

“The Court further finds that the aforesaid liens were on taxes assessed against Metals Arts Co., a co-partnership composed of Vance Prather and Virginia Prather, which co-partnership was a predecessor of the bankrupt corporation here, which bankrupt corporation assumed the liabilities of the said co-partnership; The Referee further finds that

the tax liens as filed were liens against Metals Arts Co., a co-partnership and were not filed or asserted against bankrupt herein.

“Now, Therefore,

“It Is Ordered and directed that the Collector of Internal Revenue has no lien against the real property sold by Vance Prather and Virginia Prather to this bankrupt estate by virtue of the fact that this bankrupt estate became at the time of the purchase and recordation of the aforesaid Grant Deed a ‘purchaser’ within the meaning of Section 26 U.S.C.A. 3672a, and that therefore, the said lien of the Federal Government [67] for taxes due from Vance Prather and Virginia Prather for the year 1945, was not good until the recordation of the United States Government lien on November 7, 1947, and that further,

“It Is Ordered that the Collector of Internal Revenue has no claim or right in this bankruptcy for the taxes levied against Vance Prather and Virginia Prather for the year 1945, and

“It Is Further Ordered that the claim of the Collector of Internal Revenue in the amount of \$1,757.82 as a result of this bankrupt’s operation under the provisions of Chapter XI, be and the same hereby is allowed as a claim to participate ratably with other claims arising under Chapter XI operation of this debtor, and is hereby denied any priority whatsoever over any other claims arising in or out of the operation of this debtor under Chapter XI.



“It Is Further Ordered that the claims for taxes in the amount of \$2,967.06 plus interest, as due from the predecessor partners, the Metals Arts Co., be and the same hereby are allowed as a tax claim within the provisions of Section 64(a)4 of the National Bankruptcy Act, and

“It Is Further Ordered and directed that the said claims for taxes from the Metals Arts Co. do not constitute a lien either upon the real property of this bankrupt corporation which has been sold heretofore to the City of Pasadena or a lien upon the proceeds of such sale.

“Dated: This 3rd day of March, 1950.

BENNO M. BRINK,  
Referee in Bankruptcy.”

The petitioner alleges that the Referee in Bankruptcy erred in the following particulars in the making of said order of March 3, 1950:

1) The Referee in Bankruptcy erred in his Order of March 3, 1950, in failing to hold that all of the assets of the debtor, Juvenile Products of Pasadena, a corporation, which the trustee in bankruptcy received were constructively impressed with the trust provided by Section 3661 of the Internal Revenue Code for withholding taxes withheld [68] from wages paid by the debtor while operating under the jurisdiction of the court in a Chapter XI proceeding immediately prior to its adjudication as a bankrupt.

2) That the Referee in Bankruptcy erred in his Order of March 3, 1950, in holding that the claim presented by the Collector of Internal Revenue in the amount of \$1757.82, covering Federal Withholding taxes withheld by the bankrupt from the wages paid its employees while said bankrupt was operating under the provisions of Chapter XI of the Bankruptcy Act, must participate ratably with other claims arising under the Chapter XI operations of the debtor preceding its adjudication as a bankrupt.

3) That the Referee in Bankruptcy erred in adopting his Finding of Fact No. 2, in that he should have determined that during the time said bankrupt operated under Chapter XI of the Bankruptcy Act, it followed the consistent practice of, in effect, using the taxes withheld from the wages of its employee in one week to pay the wages or take-home pay of its employees in the succeeding weeks of its operation, and that it did have at the time funds with which to create the trust required by Section 3661 of the Internal Revenue Code with respect to taxes withheld from the wages of employees.

Dated: April 14, 1950.

ERNEST A. TOLIN,  
United States Attorney.

E. H. MITCHELL, and  
EDWARD R. McHALE,  
Assistant U. S. Attorneys.

EUGENE HARPOLE,  
Special Attorney, Bureau of  
Internal Revenue.

By /s/ EUGENE HARPOLE,  
Attorneys for Collectors of  
Internal Revenue.

Affidavit of Service by Mail attached.

[Endorsed]: Filed, Referee, April 17, 1950. [69]

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SUPPLEMENT TO REFEREE'S CERTIFI-  
CATE ON PETITION FOR REVIEW OF  
ORDER IN RE CLAIM OF COLLECTOR  
OF INTERNAL REVENUE FOR WITH-  
HOLDING TAXES

To The Honorable William C. Mathes, Judge of the  
Above-Entitled Court:

Pursuant to the request of counsel for the United States of America, I, Benno M. Brink, one of the Referees in Bankruptcy of said Court, before whom the above entitled matter is pending under an order of general reference, do hereby supplement my Referee's Certificate on Petition for Review of Order in re Claim of Collector of Internal Revenue for Withholding Taxes, filed herein on the 19th day of May, 1950, by transmitting herewith the following additional papers, to wit:

1. Photostat of First Report of Trustee and Petition for Distribution, filed May 14, 1949.

2. Objections to claim of H. B. Kelley, filed October 22, 1949.

3. Order appointing H. B. Kelley as Disbursing Officer upon Confirmation of Arrangement, filed June 10, 1948. [71]

4. Order Terminating Liability of Surety on Bond of H. B. Kelley as Disbursing Officer, filed August 10, 1949.

5. Request for Inclusion of Documents in Referee's Certificate on Review, filed May 15, 1950.

Respectfully submitted this 6th day of June, 1950.

/s/ BENNO M. BRINK,  
Referee in Bankruptcy.

[Endorsed]: Filed U.S.D.C., June 6, 1950. [72]

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[Title of District Court and Cause.]

FIRST REPORT OF TRUSTEE AND  
PETITION FOR DISTRIBUTION  
(NOT FINAL)

To Honorable Benno M. Brink, Referee in  
Bankruptcy:

Comes now Paul W. Sampsell, the Trustee herein, and respectfully represents that the above bankrupt originally filed a Debtor's proceeding herein on April 6, 1948, but that the business did not prosper, and further obligations were incurred, and adjudi-

ation was, therefore, entered and your Trustee directed to liquidate the estate. A bond of Ten Thousand Dollars (\$10,000.00) was filed as requested and said bond was thereafter approved.

That this concern was engaged in business at 81 Masonic Court, Pasadena, said building being in the rear and fronting on an alley North of Colorado Boulevard, and West of Fair Oaks in Pasadena. That the property occupied a large building with a great deal of floor space, but it was a very old building, and at what appeared to be a very high rental.

Your Trustee immediately took possession and compiled an inventory as shown by the files herein, which said inventory disclosed the following:

	Inventory	Appraisal
Merchandise .....	\$ 669.65	\$ 300.00
Supplies .....	1,630.65	400.00
Machinery .....	9,984.75	2,250.00
Office Furniture and Fixtures.....	928.00	500.00
Lease Contracts:		
1 Crescent Planer		
Cost	\$2,661.69	
Due	825.00 Equity.....	1,836.69
		175.00
1 Mock Rip Saw		
Cost	\$ 760.00	
Due	352.80 Equity.....	407.20
		25.00
Dodge Truck (on premises)		
Value	\$1,150.00	
Due	933.44 Equity.....	216.56
		No value
Machinery (Located at 1111 Mentone).....	2,385.00	1,000.00
Total.....	\$18,058.50	\$4,650.00

That said inventory was totally liquidated after suitable advertisement, as disclosed by the files of the estate and the attached account of the Trustee.

### Real Estate

That the bank set forth the certain real property in the City of Pasadena, consisting of vacant property in the commercial area of Pasadena, and lying directly opposite the warehouse of the City of Pasadena. Said property had various encumbrances against it, and after wide advertisement, it was apparent that the City of Pasadena was quite anxious to acquire the property as a yard for telephone poles and other personal property. After long negotiation a sale was made to the City of Pasadena for \$36,000.00. That the appraisal on said property was \$33,000.00. That said property had as a lien a claim of one A. V. Nast, and that it is necessary that the validity and amount of said lien be determined.

That the escrow of sale has been closed, as disclosed by the attached account.

That the bank scheduled various Accounts Receivable, all of which have received the careful consideration of the Trustee, and a considerable amount of money collected. That under Order of Court [74] the Accounts Receivable are now in the hands of G. E. Preston, an experienced collector, under the terms of an order entered herein and as disclosed by the files of this estate.

That your Trustee has prepared a list of the obligations incurred after the date of bankruptcy and

under an Order of Court has paid a dividend therein, as directed by your Honor.

That your Trustee believes that a hearing should be had on this First Report and that such amount as may be now properly payable be discharged. That your Trustee requests that compensation be allowed the Trustee by reason of the services rendered herein, and as disclosed by the files of this estate total receipts in the sum of \$46,737.77, which said compensation amounts to \$607.37.

Wherefore, your Trustee prays that an Order be made, allowing and approving his report and account, and directing such pro rata payments as may be found proper.

Respectfully submitted,

/s/ PAUL W. SAMPSELL,  
Trustee.

CRAIG, WELLER &  
LAUGHARN

By.....  
Attorneys for Trustee. [75]

## Exhibit "A"

## Receipts:

12/22/48:

H. B. Kelley, Disbursing Agent

Balance from fire losses.....\$974.67

Receipts from sales ..... 131.23 \$1,105.90

12/22/48:

Cash Sales, sand boxes, toy chests..... 28.00

12/30/48:

David Weisz

Sale of assets ..... 4,300.00

12/30/48:

Snutt and Crawford

Return premium on Insurance..... 77.61

1/17/49:

Bank of America, Pasadena

Balance in Bank ..... 591.03

Collections of Accounts Receivable, as

itemized in Exhibit "B," attached hereto..... 4,635.23

5/ 6/49:

City of Pasadena

Deposit on bid of \$36,000.00..... 3,600.00

8/31/49:

Title Insurance and Trust Company

Sale through Escrow

Balance sale price ..... 32,400.00

Total Receipts.....\$46,737.77

## Disbursements:

12/31/48:

Mame B. Beatty, County Recorder

Recording order approving Trustee's Bond....\$ 1.60

12/31/48:

Frank Poole

Services re assets, 12/10—12/28/48

100 hrs. at \$1.75.....\$175.00

Total expense ..... 16.94 191.94

12/31/48:

Chas. W. Sheely, Services re sale

inventory, 12/13—12/48/48

89½ hrs. at \$1.75..... 156.63

240 miles at \$0.06..... 14.40

Phone calls ..... 1.80 172.83



Disbursements—(Continued) :

12/31/48:			
Los Angeles Daily Journal			
Advertising sale .....		7.60	
12/31/48:			
Mrs. Florence Miller			
Services re accounts receivable			
3 days at \$50.00 per week.....		30.00	
12/31/48:			
Los Angeles Stenographic Service			
Mimeographing and mailing notices of sale		44.14	
12/31/48:			
G. E. Preston, Services re accounts			
receivable, 12/13—12/23/48			
60 hours at \$1.75.....	100.50		
24 miles at \$0.06.....	8.64	109.14	
1/ 6/49:			
William A. Wylie, Services re			
Court sale, 12/8—12/27/48			
20 hours at \$1.75.....	35.00		
Carfare .....	1.00	36.00	
1/12/49:			
Los Angeles Times			
Advertising sale .....		58.80	
1/18/49:			
Los Angeles Stenographic Service			
Multigraphing and sending out			
list of Administration Obligations.....		25.18	
1/20/49:			
W. W. Freeman Detective Agency			
Services re nite patrol December 1948.....		8.00	
2/ 2/49:			
E. B. Bowman			
Reporter's services 6/25/48—1/31/49.....		80.00	
2/ 7/49:			
Los Angeles Examiner			
Advertising sale .....		37.38	
2/ 7/49:			
Clifton Clay, copy of deposition of:			
Vance Prather .....	5.00		
Mrs. Virginia McDonald .....	10.80		
A. D. Nast .....	5.00	20.80	

## Disbursements—(Continued) :

2/ 7/49:

Pasadena Star News Advertising sale .....		11.76
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2/ 7/49:

G. E. Preston Services re collection of accounts receivable, 1/3—1/27/49		
16 hours at \$1.75 .....	28.00	
21 miles at \$0.06 .....	1.26	29.26

2/ 7/49:

William A. Wylie, Services re claims, 1/12—1/29/49		
9 hours at \$1.75 .....	15.75	
Carfare .....	.40	16.15

2/ 9/49:

A. D. Bond Agency Insurance—stock, equipment .....	\$ 72.79	
Truck .....	3.36	
Burglary .....	5.00	81.15

2/10/49:

St. Paul Mercury Indemnity Company Premium on Trustee's Bond .....		40.00
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2/28/49:

Bruce Hudson Transfer Picking up and delivery of records.....		15.45
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2/28/49:

Denis A. Lyons Service of subpoena .....		14.96
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2/28/49:

Chas. W. Sheely, Services re claim of Benner and accounts receivable, 2/16/49 to 2/17/49		
6 hours at \$1.75 .....	10.50	10.50

3/ 2/49:

G. E. Preston, Services re accounts receivable, 2/16/49		
4 hours at \$1.75 .....		7.00

3/31/49:

G. E. Preston, Services re accounts receivable, 3/14/49		
4 hours at \$1.75 .....	7.00	
21 miles at \$0.06 per mile.....	1.26	8.26

Disbursements—(Continued) :

4/18/49:	Charles W. Shelly, Services re checking Benner claim, 3/30—4/6/49 10 hours at \$1.75 .....	17.50
4/26/49:	G. E. Preston, Services re making exhibits of accounts receivable, as per order of court 4 hours at \$1.75 .....	7.00
4/26/49:	Title Insurance & Trust Company Services re title report .....	18.75
4/26/49:	E. B. Bowman Reporter's services 2/23, 3/16, 30 and 4/16	25.00
4/28/49:	Pasadena Star-News Notice of hearing on sale of real estate.....	59.38
5/ 2/49:	Howard B. Benner Payment of claim, as per court order 4/11/49 .....	4,297.35
5/ 2/49:	Los Angeles Stenographic Service Mimeographing and mailing notices of sale	22.10
5/10/49:	Southern California Gas Company Closing bill .....	14.40
5/18/49:	City of Pasadena Closing light and water bill.....	36.72
5/23/49:	William A. Wylie, services re claims 2/11—4/30/49 .....	24.50
	Carfare .....	1.00
		<hr/>
6/15/49:	First Dividend of 15% on Chapter XI claims as per Distribution Sheet of Juvenile Products .....	2,108.74
	Less Southern California Gas Company claim paid in full.....	2.16
		<hr/>
6/21/49:	E. B. Bowman Reporter's fees 5/4, 5/24, 6/8/49.....	15.00

## Disbursements—(Continued):

6/30/49:

William A. Wylie, services re escrow sale of real property, 5/11—6/11/49			
21 hours at \$1.75 .....	36.75		
Expense .....	2.00	38.75	

6/30/49:

G. E. Preston, commissions on collections:			
50% Edna's Gift Shop—\$25.00.....	12.50		
33 $\frac{1}{3}$ % Sears Roebuck—\$114.86.....	38.29	50.79	

9/ 9/49:

G. E. Preston, 50% commission on collections:			
Edna's Gift Shop—\$12.40.....	6.20		
\$10.00.....	5.00		
George Smith Company—\$73.80.....	36.90	48.10	

8/31/49:

Paid through escrow			
Title Insurance and Trust Company			
Policy of Title Insurance .....	110.00		
Escrow fee .....	30.50		
Recording Reconveyances (2).....	4.00		
Recording Releases (2) .....	4.00		
Paid County tax sale.....	1,197.80		
Paid City tax sale.....	279.39		
Weed assessment credit .....	63.20		
Adjust taxes County .....	72.96		
Adjust taxes City .....	24.02		
Commission .....	1,500.00		
Paid estate Ethel Bateman.....	7,621.05		
Interest on \$7,161.52 at 6%			
from 12/10/48—8/26/49 .....	305.55		
Pay estate of Wm. E. Easter-			
brook, deceased .....	9,436.47		
Interest on \$8,867.47 at 6%			
from 12/10/48—8/26/49 .....	378.34		
Reconveyance fees (2) .....	7.00		
Trust deed foreclosure fees.....	119.72	21,154.00	28,994.82

Balance Cash on Hand, 10/6/49.....\$17,742.95

## Fees and Allowances to Be Made:

Trustee's fee on account .....	\$
Trustee's expense, Dec., 1948, through Sept., 1949.....	\$226.49
Fee of attorney for Trustee, on account.....	\$
Referee's Salary Fund .....	\$
Referee's Expense Fund .....	\$

## Exhibit "B"

## Collections of Accounts Receivable:

12/22/48:

Babytown Stores .....	\$ 97.60	
Bon Ton Kiddie Shop .....	47.81	
Brown Dunkin .....	78.20	
Cindrella Shop .....	97.61	
Cozzett's .....	18.43	
Feline's .....	867.30	
Hadley's .....	17.64	
Harbour Longmire .....	89.34	
The Harris Company .....	11.76	
Herman's Department Store .....	48.80	
Holiday Hardware Company .....	72.32	
Indiana Jobbing & Mercantile .....	222.26	
Jacob Mange .....	63.50	
Lobel's Youth Center .....	42.34	
Madigan's .....	48.80	
Harry S. Manchester .....	48.80	
Piser .....	103.07	
Richard Store Co. ....	89.96	
Senger Dry Goods Co. ....	69.38	
Gunner A. Smidt .....	97.61	
Hartegan's .....	55.97	
Ridgewood Hardware .....	118.19	
Tinytown .....	11.76	
J. L. Hudson Co. ....	110.54	
Hurley Jones Company .....	61.74	\$2,590.73

12/30/48:

Maison Blanche .....	\$123.48	
Famous Barr Company .....	127.01	
Asahi Shoe and Dry Goods .....	28.22	278.71

1/ 3/49:

J. F. Stampfer Company .....	56.24	
Harry S. Manchester, Incorporated .....	61.73	
The Circus Shops .....	111.60	
Leona Clark Children's Shop .....	49.80	
Chandler and Company, Incorporated .....	124.66	
Hutzler Brothers Company .....	146.41	
Denholm and McKay Company .....	97.61	
Hush-A-Bye House .....	49.80	
Seranton Dry Goods Company .....	39.61	737.46

1/10/49:		
Neil Gammon's Baby Dept. Store .....	52.92	
Eve Young .....	43.20	
The Scamper Shop .....	51.74	
Humpty-Dumpty .....	35.28	
Jack & Jill Shoppe .....	49.80	232.94
		<hr/>
1/17/49:		
Pfeifer's Toy Shop .....	15.68	
Kiddy Center .....	49.80	
Children's Department Stores .....	80.09	145.57
		<hr/>
1/21/49:		
Kiddie Towne .....	90.30	
C. K. Whitner Company .....	35.28	125.58
		<hr/>
1/28/49:		
Kay and Malnick .....		25.00
2/ 2/49:		
Hale Brothers Stores, Inc. ....		69.38
2/ 8/49:		
William Feline's .....		72.00
4/28/49:		
Frederick's Baby & Children's Shop .....		61.80
6/30/49:		
Sears Roebuck .....	114.86	
Edna's Gift Shop .....	25.00	139.86
		<hr/>
7/21/49:		
Western Toy and Baby Shop .....		60.00
8/10/49:		
Edna's Gift Shop .....		10.00
8/12/49:		
Edna's Gift Shop .....		12.40
9/20/49:		
George C. Smith Company .....		73.80
		<hr/>
	Total Collections.....	\$4,635.23

Exhibit "C"

Itemization of Trustee's Cash Advanced Account:

The actual cash advanced from personal funds for bookkeeping, stenographic and clerical work, postage and miscellaneous items in this estate, for which reimbursement is claimed in the foregoing account is as follows:

Month	Bookkeeping, Stenographic & Clerical Services	Postage	Telephone & Miscellaneous	Total
1948				
December	\$37.35	\$2.02	.....	\$39.37
1949				
January	26.40	3.88	\$2.02	32.30
February	22.50	.90	1.40	24.80
March	12.30	.39	1.45	14.14
April	11.60	.39	.55	12.54
May	24.70	1.26	2.42	28.38
June	37.55	.52	2.00	40.07
July	7.55	1.05	.50	9.10
August	3.63	.12	.....	3.75
September	21.77	.12	.15	22.04
Total Expense Through September, 1949.....				\$226.49

[Endorsed]: Filed, Referee, November 14, 1949.

[Title of District Court and Cause.]

OBJECTIONS TO CLAIM OF H. B. KELLEY

Comes now Paul W. Sampsell, trustee for the within bankrupt estate, and objects to the allowance of the claim of H. B. Kelley in the amount of \$955.50, and as and for his grounds of objection thereto alleges as follows:

I.

That the within bankruptcy proceedings were filed under the provisions of Chapter XI of the Bankruptcy Act on April 6, 1948, That the Plan of Arrangement was confirmed on July 24, 1948.

## II.

That thereafter it was discovered that the business of the bankrupt was operating at a huge loss and an order of adjudication was made on December 10, 1948.

## III.

Your trustee alleges that in excess of \$15,000 of new obligations were incurred subsequent to the filing of the bankruptcy proceedings and were not paid by the debtor in its operations and now remain unpaid.

## IV.

That your trustee alleges that the operation of the debtor [84] in this proceeding has created a situation in this estate wherein the creditors existing as of the date of the filing of the proceedings have suffered a loss of in excess of \$15,000 all because of the acts of the officers of the bankrupt and the claimant herein.

## V.

Your trustee further alleges that the officers of the bankrupt and the claimant were instructed to file reports with the Referee and report to the Referee their unpaid bills and the progress of their operations. That they did not comply with the instructions of the Referee and permitted large obligations to be incurred and remain unpaid all to the detriment of the creditors herein. Your trustee alleges that the said H. B. Kelley permitted the matter to run along without the payment of his salary.



VI.

That if he had reported the situation to the Referee, the Referee would have terminated the operation. That there was no operation during the period, or profit.

VII.

That the said claimant was employed in lieu of a disbursing agent and as such was an officer of the Court herein and was under the further duty to keep the Court informed of the true situation and make the reports herein as required by the order of the Court, and the Court was not informed of the true condition of the debtor over a period of many weeks.

VIII.

At the time of the appointment of the said H. B. Kelley herein it was anticipated that he would be paid currently, and your trustee further alleges that there was very little, if any, consideration rendered to the administration herein upon behalf of the said claimant and further in no event would the said claimant be entitled to full payment of his said claim herein.

Wherefore, your trustee prays that the said claim be disallowed.

/s/ PAUL W. SAMPSELL.

Trustee. [85]

To The Above Creditor, H. B. Kelley, and William  
E. Prather, His Attorney:

You Are Hereby Notified that the Trustee in Bankruptcy herein has made and filed herein his written objections to claim as hereinbefore set forth, and the same have been set for hearing before the Honorable Benno M. Brink, Referee in Bankruptcy in the Federal Building, Los Angeles, California, on the 1st day of November, 1949, at the hour of 10 a.m. thereof.

Dated: October 20, 1949.

CRAIG, WELLER &  
LAUGHARN,

By /s/ HUBERT F. LAUGHARN,  
Attorneys for Trustee.

[Endorsed]: Filed Referee, October 22, [86]  
1949.

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[Title of District Court and Cause.]

ORDER APPOINTING H. B. KELLEY AS DIS-  
BURSING OFFICER UPON CONFIRMA-  
TION OF ARRANGEMENT

It Appearing to the Court that H. B. Kelley was nominated as Disbursing Officer to receive and to disburse all funds required to be received and deposited upon the confirmation by this Court of the arrangement of Juvenile Products of Pasadena, a Corporation, Debtor; and

It Further Appearing to the Court that said H. B.

Kelley resides in the County of Los Angeles within the Southern District of California, Central Division, is competent and a qualified person so to act, and that it is for the best interests of all parties to these proceedings that he be so appointed;

It Is Hereby Ordered that H. B. Kelley be and he is hereby appointed by this Court as Disbursing Officer to and that he shall

(a) Collect and receive all monies and funds to pay in cash in full all costs of administration in these proceedings as fixed and determined by order of this Court; to pay to all valid claims of Juvenile Products of Pasadena, a Corporation, Debtor, entitled to priority, which have not been waived as to immediate payment and to pay said valid prior claims the amounts of immediate payment required as under [87] the terms of their respective written waivers as in said respective written waivers set out; and to pay to the unsecured creditors of said Debtor, after their claims have been finally fixed and determined, upon the first day of the month following the confirmation by this Court of said Debtor's arrangement an amount pro rata of 10% of the amounts received by it from its sales as the claim of said unsecured creditor bears to the total amount of the claims of all other said unsecured creditors and to pay said pro rata of said 10% of said receipts from its sales regularly on or before the 1st day of each calendar month thereafter until the full amount of the claim of each unsecured creditor has been paid in full together with interest at the rate of 6% per annum from

the date of confirmation of Debtor's arrangement until paid.

(b) Keep records and accounts of all monies received and disbursed in paragraph (a) immediately above set out, make such reports in writing to this Court as this Court may require, and to furnish such information as to said receipts and disbursements as may be requested by parties in interest.

That upon qualifying as Disbursing Officer herein he shall file a bond of a reputable surety company in the sum of \$2,500.00.

Done this 10th day of June, 1948.

/s/ BENNO M. BRINK,  
Referee in Bankruptcy.

[Endorsed]: Filed, Referee, June 10, 1948. [88]

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[Title of District Court and Cause.]

ORDER TERMINATING LIABILITY OF  
SURETY ON BOND OF H. B. KELLEY  
AS DISBURSING OFFICER

It appearing that H. B. Kelley was heretofore appointed as Disbursing Officer in this proceeding and that on December 22, 1948, subsequent to the appointment of Paul W. Sampsell as Trustee in Bankruptcy herein, the said H. B. Kelley, as Disbursing Officer, filed his report in this proceeding, now, therefore, good cause appearing therefor and upon the undersigned Referee's own motion,

It is ordered that the Surety on the bond heretofore given in this matter by the said H. B. Kelley, as Disbursing Officer herein, shall have no liability under the said bond for any act or omission of the said H. B. Kelley, as Disbursing Officer in this matter, subsequent to the 22nd day of December, 1948.

Dated: August 10, 1949.

/s/ BENNO M. BRINK,  
Referee in Bankruptcy.

[Endorsed]: Filed, Referee, August 10, [89] 1949.

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[Title of District Court and Cause.]

ORDER ON REVIEW OF REFEREE'S ORDER  
OF MARCH 3, 1950

Upon the petition for review filed April 17, 1950, by the Collector of Internal Revenue; upon the certificate of Referee Benno M. Brink; upon the proceedings had before the Referee as appear from his certificate and supplemental certificate; and upon hearing counsel for the parties; and it appearing to the court:

(a) that the amount of withholding taxes [26 U.S.C. § 1622] and Federal Insurance Contributions taxes [26 U.S.C. § 1400] collected or withheld by the debtor in possession under a Chapter XI plan of arrangement [Bankruptcy Act § 342, 11 U.S.C. § 742] "shall be held to be a special fund

in trust for the United States" [26 U.S.C. § 3661, see 26 Code Fed. Regs. § 405.605 (1949)]:

(b) that the Collector of Internal Revenue has the burden of tracing the amounts so collected and withheld which he claims constitute a trust fund [In re Independent Automobile Corp., 118 F. 2d 537. [91] 539 (2d Cir. 1941); In re Frank, 25 F. Supp. 1005 (S.D.N.Y. 1939); 3 Scott on Trusts 2498, 2507 (1939 ed.)]:

(c) that the taxes so collected and withheld constitute "debts contracted . . . after the confirmation of an arrangement" [Bankruptcy Act § 64(b), 11 U.S.C. § 104(b); cf. § 64a(4), 11 U.S.C. § 104a(4); Vogel v. Mohawk Electric Sales Co., 126 F. 2d 759 (2d Cir. 1942)]:

It Is Ordered that the Referee's order filed March 3, 1950, be and is hereby confirmed.

It Is Further Ordered that the Clerk this day serve copies of this order by United States mail on

- (1) Referee Benno M. Brink:
- (2) Attorney for the Trustee; and
- (3) Attorney for the Collector of Internal Revenue.

September 30, 1950.

/s/ WM. C. MATHES.

United States District Judge.

Judgment entered Oct. 5, 1950.

[Endorsed]: Filed, U.S.D.C., October 2. [92] 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America hereby appeals to the Court of Appeals for the Ninth Circuit from the order of the United States District Court for the Southern District of California dated September 30, 1950, which confirms the order of the Referee in Bankruptcy of March 3, 1950, wherein it was ruled and ordered that the claim of the Collector of Internal Revenue in the amount of \$1750.82 for Federal withholding tax arising as a result of the bankrupt's operations under the provisions of Chapter XI of the Bankruptcy Act was allowed to participate only ratably with other claims arising under Chapter XI operations of said debtor, and was denied any priority whatsoever over any other claims arising in or out of the operation of said debtor under Chapter XI. The order appealed from was filed October 2, 1950.

Dated: October 27, 1950.

ERNEST A. TOLIN,  
United States Attorney.

E. H. MITCHELL, and  
EDWARD R. McHALE,  
Assistant U. S. Attorneys.

EUGENE HARPOLE, and  
 FRANK W. MAHONEY,  
 Special Attorneys,  
 Bureau of Internal Revenue.

By /s/ EUGENE HARPOLE,  
 Attorneys for Appellant.

[Endorsed]: Filed, U.S.D.C., October 27, [93]  
 1950.

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[Title of District Court and Cause.)

APPELLANT'S STATEMENT OF POINTS TO  
 BE URGED UPON APPEAL

To Paul W. Sampsell, Trustee in Bankruptcy of  
 Juvenile Products of Pasadena, a Corporation,  
 and Craig, Weller and Laugharn, His Attor-  
 neys:

You, and Each of You, Will Please Take Notice  
 that under the provisions of Rule 75 of the Rules  
 of Civil Procedure of the District Court of the  
 United States, the appellant intends to rely upon  
 the following points in the appeal of the above-  
 entitled case:

1. The District Court erred in confirming the  
 Referee in Bankruptcy's Order of March 3, 1950.

2. The District Court erred in its Order of Sep-  
 tember 30, 1950, in failing to hold that all of the



assets of the debtor, Juvenile Products of Pasadena, a corporation, which the trustee in bankruptcy received were constructively impressed with the trust provided by Section 3661 of the Internal Revenue Code for withholding taxes withheld from wages paid by the debtor while operating under the jurisdiction of the District Court in a Chapter XI proceeding immediately prior to its [94] adjudication as a bankrupt.

3. The District Court erred in its Order of September 30, 1950, in confirming the Order of the Referee in Bankruptcy of March 3, 1950, and thereby holding that the claim presented by the Collector of Internal Revenue in the amount of \$1,757.82 covering federal withholding taxes withheld by the bankrupt from the wages paid its employees while said bankrupt was operating under the provisions of Chapter XI of the Bankruptcy Act must participate ratably with other claims arising under the Chapter XI operations of the debtor proceeding its adjudication as a bankrupt.

4. The District Court erred in confirming the Referee in Bankruptcy in the latter's failure to hold that the bankrupt during the time it operated under Chapter XI of the Bankruptcy Act had the funds with which to create the trust required by Section 3661 of the Internal Revenue Code with

respect to taxes withheld from the wages of its employees.

Dated: This 17th day of November, 1950.

ERNEST A. TOLIN,  
United States Attorney.

E. H. MITCHELL, and  
EDWARD R. McHALE,  
Assistant United States  
Attorneys.

EUGENE HARPOLE, and  
FRANK W. MAHONEY,  
Special Attorneys, Bureau of  
Internal Revenue.

By /s/ EUGENE HARPOLE,  
Attorneys for United States  
of America.

Receipt of copy acknowledged.

[Endorsed]: Filed, U.S.D.C., November 17, [95]  
1950.

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION  
OF THE RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

You are hereby requested to include in the Record of Appeal from the Order of the District Court dated September 30, 1950, the following:

1. Petition and State of Affairs, filed April 6, 1948.
2. Approval of Petition and Order of Reference, filed April 6, 1948.
3. Order Confirming Arrangement, filed July 27, 1948.
4. Order of Adjudication, filed December 13, 1948.
5. Petition for Order to Show Cause, filed December 16, 1949.
6. Order to Show Cause, filed December 16, 1949.
7. Findings of Fact and Order, filed March 3, 1950.
8. Motion and Order Extending Time to File Petition on Review, filed March 13, 1950.
9. Petition for Review, filed April 17, 1950.
10. Referee's Certificate on Petition for Review, filed May 19, 1950.
11. Request for Inclusion of Documents in Referee's Certificate, filed May 15, 1950. [97]

12. Supplement to Referee's Certificate, filed June 6, 1950.

13. Order on Review of Referee's Order of March 3, 1950, filed October 2, 1950.

14. Certified Copy of Bond of H. B. Kelley in sum of \$2,500.00, filed June 11, 1948.

15. Notice of Appeal, filed October 27, 1950.

16. Appellant's Statement of Points to Be Urged Upon Appeal.

17. This Designation.

Dated: This 17th day of November, 1950.

ERNEST A. TOLIN,  
United States Attorney.

E. H. MITCHELL, and  
EDWARD R. McHALE,  
Assistant United States  
Attorneys.

EUGENE HARPOLE, and  
FRANK W. MAHONEY,  
Special Attorneys, Bureau of  
Internal Revenue.

By /s/ EUGENE HARPOLE,  
Attorneys for United States  
of America.

Receipt of copy acknowledged.

[Endorsed]: Filed, U.S.D.C., November 17, [98]  
1950.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET  
CAUSE ON APPEAL

Pursuant to Rule 73(g) Federal Rules of Civil Procedure, and Good Cause appearing therefor,

It Is Hereby Ordered that the time within which to file the record and docket the above-entitled cause in the United States Court of Appeals for the Ninth Circuit be, and the same is hereby extended to and including January 25, 1951.

Dated: This 17th day of November, 1950.

/s/ WM. C. MATHES,  
United States District Judge.

[Endorsed]: Filed, U.S.D.C., November [100]  
17, 1950.



[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 100, inclusive, contain the original Petition for An Arrangement Under Chapter XI of the Bankruptcy Act together with Schedules and Statement of Affairs; Approval of Debtor's Petition and Order of Reference; Bond of H. B. Kelley, Disbursing Officer; Certified Copy of Order Confirming Arrangement of Debtor Under

Chapter XI of the Bankruptcy Act; Order of Adjudication; Referee's Certificate on Petition for Review of Order in re Claim of Collector of Internal Revenue for Withholding Taxes; Petition for Order to Show Cause and for an Order to Restore Order to Show Cause to Calendar; Order to Show Cause and Order to Restore Order to Show Cause to Calendar; Findings of Fact and Order on Order to Show Cause; Motion and Order Extending Time to File Petition for Review; Petition for Review; Supplement to Referee's Certificate on Petition for Review of Order in re Claim of Collector of Internal Revenue for Withholding Taxes; Photostatic copy of First Report of Trustee and Petition for Distribution; Objections to Claim of H. B. Kelley; Order Appointing H. B. Kelley as Disbursing Officer upon Confirmation of Arrangement; Order Terminating Liability of Surety on Bond of H. B. Kelley as Disbursing Officer; Request for Inclusion of Documents in Referee's Certificate on Review; Order on Review of Referee's Order of March 3, 1950; Notice of Appeal; Statement of Points on Appeal; Designation of Record on Appeal and Order Extending Time to Docket Appeal which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 15 day of January, A.D. 1951.

EDMUND L. SMITH,  
Clerk.

By /s/ THEODORE HOCKE,  
Chief Deputy.

[Endorsed]: No. 12811. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Paul W. Sampsell, Trustee in Bankruptcy of the Estate of Juvenile Products of Pasadena, a corporation, bankrupt, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed January 16, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

